IT’S CRIMINAL BY DESIGN

by Timothy Madden

As at early 2010 the global financial system is undergoing a virtual *controlled demolition* to dispose of a massive liability to the apparent owners of the system. There is virtually not a mortgage out there that is worth the paper it is printed on in law or in equity. We are not experiencing a financial crisis, *per se*, but more correctly a crisis of criminality. They are destroying the liabilities by destroying the legal entities (financial institutions) to which they are attached. *Who are you going to sue*?

If you have a mortgage with a financial institution, then it is a virtual certainty that it is on its face a *false document* (as defined in Canada, for example, by s. 321 of the *Criminal Code*) and civilly unenforceable. The truly interesting part is that the criminality is so obvious, usually flagrantly so, and the reason why.

Virtually every mortgage contains one or more of five primary and positive criminal devices. They are:

- False receipt and/or false declaration of ownership;
- Fictitious consideration;
- *Bait and switch;*
- Wager; and
- Concealment of loan fees by omission.

1. False Receipt

The most common form of mortgage (for an initial home purchase) states to the effect:

> I, John/Jane Smith, <u>being registered</u> as owner of an estate in fee simple of the following lands: [legal description of property]
>
> In consideration of the sum of [$ Principal Amount] <u>lent to me</u> [past tense] by [Bank], <u>the receipt</u> and sufficiency <u>of which is hereby acknowledged</u>, do hereby covenant as follows: [mortgage terms and conditions]

As and when the writings are signed, witnessed, notarized, and delivered, generally both sworn statements are objectively and demonstrably false. The nominal borrower wants the loan so that they can first become the owner, and then register such ownership; and they have not yet received a penny from the bank. So why does the solicitor get them to sign and swear under oath and penalty of perjury that they are the existing registered owner and that the bank has already paid them the loan proceeds?

Nor is it a mere *technicality*, because the bank then places essential and material reliance on the mortgage receipt clause in its sourcing (conversion/creation) of funds for the purported loan.

But <u>time is of the essence</u>, and if a writing (as a legal document) is a *false document* as and when nominally executed, then no subsequent treatment can cure that defect between the parties.

2. Fictitious or illusory consideration

The second most common technique is *fictitious or illusory consideration* where the mortgage states that the nominal borrower transfers ownership of the mortgage to the bank in exchange for the bank's bare agreement to make a loan or to advance credit. It is illegal and contrary to GAAP (Generally Accepted Accounting Principles/Practices) for a bank (or any lender or creditor) to hold out its agreement to loan as a separate or distinct consideration or service from the loan itself.

A typical (mortgage-secured) VanCity (Vancouver City Savings Credit Union (a major Canadian financial institution)) **CREDITLINE LOAN AGREEMENT** states, for example, (emphasis added):

> **IN CONSIDERATION** of VANCOUVER CITY SAVINGS CREDIT UNION ("VanCity") **<u>agreeing to establish a Creditline</u>** on the Account Number and Type noted above (the "Account") for the undersigned (the "Member") **<u>and agreeing to lend</u>** to the Member up to the sum shown below as the Authorized Limit (the "Authorized Limit"), the Member and VanCity agree as follows:... [other terms set out]

The stated consideration is illusory (of no substance), specifically illegal in the case of a financial institution, the bank is in the business of knowing it, and its executive officers must swear under oath and penalty of perjury that it knows it (under the bank's Annual Report(s)). Further, no borrower has the capacity to allow or to agree

to allow a bank, or anyone else, to violate the many and varied laws against the practice.

3. Bait and switch

The fictitious or illusory consideration technique is almost always used together with the *bait and switch* technique. Even if a bank's bare agreement to loan were itself a real and legal consideration, it is almost always negated by a disclaimer, as in the above VanCity example, which continues:

> **NO OBLIGATION TO ADVANCE** - The Member acknowledges and agrees that **neither the execution of this Creditline Agreement nor execution and delivery of any security shall bind** VanCity to advance or re-advance any unadvanced portion thereof, **but nevertheless the estate conveyed to VanCity by any security shall take effect upon the execution and delivery of such security**.

Even without the Bank Act, Credit Union Act, Trust and Loan Companies Act, CICA (Canadian Institute of Chartered Accountants), and/or GAAP or false pretense. It is classic *bait and switch*. It is also *mala en se* or evil/wrongful of itself, meaning fraudulent on the face of it. Because it is directly contradicted and expressly over-ridden by the NO OBLIGATION TO ADVANCE clause, the initial *bait* clause can have no logical purpose other than to deceive.
regulations, the presence of a disclaimer that the bank is not bound to make a loan makes the express prior statement "In Consideration of [the bank's] agreement to lend...", of itself, into an objectively false representation
With the intent to provide for its own unearned/unjust enrichment at the expense of the purported borrower, the bank holds out its bare and non-binding nominal agreement to loan as good and valuable consideration, substantially in the amount of the purported loan, to induce the purported borrower to execute (sign) and deliver the valuable security/money asset in favour of the bankmaterially before the bank provides any credit-in-fact. In Canada the specific criminal offence is under s. 363 of the *Criminal Code* (obtaining execution of a valuable security by fraud or false pretense), and the same is criminal in virtually every country. The bank appears to legally obtain possession and ownership of the money/asset/security while incurring no liability in law (because of the disclaimer). That is the *switch*.

Here again, it is plainly obvious that the mortgage is a fraud on its face. Put any competent accountant on the witness stand and ask them if it is legal for a financial institution to record or otherwise treat or traffic in its agreement to advance as a separate or distinct consideration from an advance itself (as *bait* or otherwise) and they will testify that it is not legal, and is in fact specifically illegal. This is among the most basic and essential rules of institutional accounting. It is a rule against double counting.

4. Wager

The standard provision and disclaimer in a mortgage that the nominal borrower is bound unconditionally, but that the alleged lender is not bound to make an advance, also makes the transaction into a wager-in-law. A standard Bank of Montreal mortgage states/concludes in this respect, for example:

> (14) Whether or not:
>
> (c) the Lender has advanced to the Borrower part of the Principal Amount, **the Lender does not have to advance the Principal Amount** or the rest or any further part of the Principal Amount to the Borrower **unless the Lender wants to**.

The larger agreement as stated in the mortgage is that in exchange for the bank's bare agreement to advance $230,000 to the nominal borrower, the nominal borrower agrees that they owe the bank $230,000 plus interest even if the bank *changes its mind* and does not make an advance. How the bank then decides on whether to make an advance after it has received the money/asset/security is irrelevant. It is the fact of making it a chance event that creates the wager-in-law.#

Likewise again with the above *switch* clause from the VanCity example:

> **NO OBLIGATION TO ADVANCE** - The Member acknowledges and agrees that neither the execution of this Creditline Agreement nor execution and delivery of any security shall bind VanCity to advance [*i.e.*, **to award the prize**], ...but nevertheless the estate conveyed to VanCity by any security [*i.e.*, **the entry fee**] shall take effect upon the execution and delivery of such security.

By putting the agreement into the form of a wager the bank is able to nominally *book* or capitalize the value of the mortgage as its own property (like an entry fee) which it then flips back to the purported borrower as an award of newly created (interest bearing) credit (the prize) directly supported by the bank's acquisition of a right of property in the mortgage itself under the pretense of security.

To truly appreciate the aberrant nature of these practices, however, apply the same techniques to deposit accounts. Ask a banker if he will give you a signed receipt for a million dollar deposit, and say that you will return in a day or so to actually make the deposit. Ask a banker if the bank will agree that it owes you $1 million in exchange for your bare, nominal, and non-binding agreement to deposit $1 million. What banks do on purported loans is not just irregular – it is *in-your-face* criminal.

The majority of mortgages <u>contain at least three out of four</u> of the above illegal or demonstrably false provision types, <u>any one of which in law renders the mortgage void and unenforceable</u>, and makes the lawyers (and their bonding/insurance institutions) responsible for the financial consequences.

Now for the worldwide $100 trillion question:

Why would any competent lawyer solicit, or even allow, a party to sign a receipt for money received without even asking if the statement is true? “Oh before you sign that Mr. Smith, I need to ask, have you in fact received the $230,000 or whatever Principal Amount that the document claims to have already been paid to you by the bank?”

“Are you in fact the registered owner of the property? If so, then why do you want the loan? I thought that you said that you wanted the loan so that you can buy the property, yet here you are swearing under penalty of perjury that you already own it, and that such ownership is already registered?”

Why would any competent lawyer solicit, or even allow, a party to sign documents that state a fictitious and plainly illegal consideration from the other party, contrary to the most basic laws of accounting?

Why would any competent lawyer solicit, or even allow, a party to sign a document claiming to be a security, but which is on its face and by express terms a wager – racketeering by definition?

Metaphorically, the banker arrives at the transaction with *empty pockets* – he brings nothing and contributes nothing that he does not obtain from the nominal borrower – yet he walks away from the transaction as the *legal creditor* of the nominal borrower, who brings the only thing of equitable substance to the transaction (hypothecation/pledge of their future income) yet walks away the*legal debtor* of the banker. But <u>equity *trumps* law</u> and the nominal borrower can always sue the bank in equity for the constructive and/or actual fraud that the bank commits – **<u>unless the bank can induce the nominal borrower into participating in the offence</u>**.

The purpose of the solicitor in the transaction is to induce the nominal borrower to commit a *strict liability* statutory offence so as to forfeit their capacity to sue the bank in equity for the bank's fraud. This in turn allows the bank to ignore its own criminal

act and to capitalize the gain from the fraud without having to set aside a contingency on its accounting books. The legal guilt of the nominal borrower is inherent in the swearing of the document which is objectively false at the time of its making, unless he or she can establish that the language of the document is ambiguous.

The following is from a mortgage to the Canadian *Crown* corporation known as the (federal) Farm Credit Corporation (FCC). The rancher/borrower did not expect to receive the advance for two weeks, and, again as expected, the credit was subsequently not actually advanced until two weeks after he was required to sign, swear, and deliver the FCC's standard mortgage which states, in material part:

> WITNESSETH that the Mortgagor [Borrower] **for and in consideration of** --- One Hundred and Three Thousand Five Hundred --- ($103,500.00) --- Dollars of lawful money of Canada **to him in hand well and truly paid by the Mortgagee** [FCC] **at or before the sealing and delivery of these presents (the receipt whereof is hereby by him acknowledged)...**.

Again, time is of the essence, and the statement/document is plainly false as and when autographed/signed and delivered-in-fact. Further, such is not a *side issue* – evidencing the fact of executed consideration (a receipt) is the primary and stated purpose of the writing itself. It is simply a lie put to paper.

But, again, why do they make it so obvious? Why virtually scream out: "**t*o him in hand well and truly paid ...at or before...***", when the statement itself would be so plainly false to everyone present at the signing of the writing?# Why do they rub our noses in it?

It is about *regularizing* or systemically involving the equity fraud victim as *particeps criminis* (partners in crime) as an *estoppel* of the victim's equitable rights, so that the bank can trade globally in the falsified documents:

> ***particeps criminis*** ...2. The doctrine that one participant in an unlawful activity cannot recover in a civil action against another participant in the activity. (Black's Law Dictionary (7th ed.))

It also creates an *all or nothing* dilemma for the courts. Either enforce the law and equity, in which case the bankers, lawyers and judges (as former lawyers) incur the aggregate liability, or else allow and encourage the fraud to continue. There is no middle ground by design.

But regardless of the underlying purpose of the false statements of matters of fact, the fact remains that these merely apparent mortgages are objectively fraudulent on their face, they are void and unenforceable on that basis, and these seemingly anomalous provisions are not at all unique to Canada. For the most part, the form is the same all over the world.

***Quid pro quo* – the something for something is legal fees.**

The *quid pro quo* - what the lawyers get in return - is the covertly protected treatment of legal fees. The fifth item on the list is concealment by omission of illegally capitalized-in-advance loan fees, including and especially legal fees on loans, the single most significant source of income to the legal profession.

Parliament in Canada, for example, has made it directly illegal under a dozen different laws since 1880 for lenders to conceal legal fees as part of the claimed

principal amount of a loan. More precisely, Parliament has repeatedly made it illegal for lenders to conceal <u>any fees</u> as part of the alleged part of the principal amount of a loan, but the nominal civil justice system steadfastly (and illegally) refuses to enforce these laws because they interfere with the exceptionally profitable and technically criminal relationship between the legal profession and the banks.

At 12% per annum, $2,000 of legal fees on a nominal $100,000 loan, for example, will *leverage* the interest cost by almost $30,000 over the 25-year amortization period on a mortgage (substantially more in the US where 30-year amortizations are the norm). In virtually any other business, all else being equal, higher costs mean lower profits, not exponentially greater.

Even if the nominal loan were real, the legal fees are to build a kind of *legal cage* in which to hold the borrower, and they are incurred by and for the benefit of the lender, and to the detriment of the borrower. Otherwise, all else being equal, borrowers would prefer stronger cages and higher legal fees. Legal fees also tend to increase with the purported loan amount and until relatively recently were normally referred to as the *lawyer's commission*.

Regardless of the underlying reasons to systematically subvert laws against the practice, there is a very material difference between a loan of, for example, $10,000 with interest at 50%, and a loan of $15,000 with zero interest, and it is a fraud to represent the former as the latter, even though the total obligation ($15,000) may be identical. Even a child can see why.

In respect of the global credit/finance business generally, there are five primary purposes to which loan fees and false documents by omission are routinely and in fact systematically directed. They are:

- Interest rate fraud,
- Unsecured creditor fraud,
- Taxation fraud,
- Financial market fraud, and
- Regulatory fraud.

Interest rate fraud is where the lender employs loan fees to conceal or understate the real rate of interest. In the example above, the lender would require the borrower to sign a mortgage claiming that $15,000 had been loaned at zero interest, together with an unregistered side-agreement for a rebate or kick-back of $5,000 to the lender. While the borrower may or may not realize that the real rate is greater than zero, they normally do not know the actual rate they are paying. In practice, creditors use more plausible combinations because a mortgage claiming zero interest would arouse suspicion all around, and this applies also to the other four types, but we will stay with the same extreme example because it makes the process clear.

Unsecured creditor fraud occurs when the lender advances $10,000 in exchange for a registered mortgage claiming $15,000 and then claims, upon default, to be a secured creditor for $15,000 of “principal” leaving unsecured creditors of the same borrower to suffer an extra $5,000 loss of their actual principal or equity in favour of the secured lender's false claim to unearned interest.

Taxation fraud occurs when the lender advances $10,000 and then over or at the end of the term receives $5,000 of interest income when the borrower pays the total

$15,000. By creating documents that claim a principal sum of $15,000 the lender can evade or reduce the taxation on its $5,000 of interest income.

Financial market fraud occurs when the lender invests $10,000 in a loan to a borrower and then uses the document or portfolio elsewhere claiming a principal sum or investment of $15,000. This particular and flagrantly criminal technique is essentially the reason financial markets worldwide are collapsing as this is written. It is an essential and material element in all financial market leverage and pyramid schemes.

Likewise, **regulatory fraud** is rampant. Banks do not generally loan money – at best they advance credit and there is a world of difference. On average a bank has to have $5 in cash in the vault in order to advance a new $100 of credit. The banks accordingly require borrowers to sign for $105 for every $100 net, and to make up the difference by concealed loan fees. So the borrower signs a mortgage for $105 but only receives $100 of credit as principal, and the bank books the $5 differential as an earned cash reserve to defeat the reserve law. The *catch* is that if the borrower goes bankrupt right away, then how much is actually in the vault from this transaction? Answer: zero. It is in fact an advance of $100 with a much higher rate than stated (see again**interest rate fraud**), and no reserve at all in the vault.

Then, if you start cross-leveraging and pyramiding these things, one on top of the other, the result is an eventual disaster of biblical proportions. Welcome to 2010.

In every case the crime is committed with the solicitation for the making of the false document with the intent that it be relied upon as genuine. Each of these five techniques is today rampant throughout the financial world. We are being systematically looted by a virtual *tag-team* of national and international banks and national and international law firms. The banks do the looting and the lawyers get a kick-back to solicit and endorse the falsified documentation.

Money costs money while credit does not

Further, and again, banks generally do not deal in *money*, but rather *credit*. The principal difference is that it costs money to loan money but it is a relatively costless undertaking to advance credit. The Alberta Court of Appeal gave a surprisingly accurate description of the real world in a 1967 decision called *Breckinridge Speedway v. R* [The Crown] (1967) 63 W.W.R. 257.

The likely reason we got the truth here was that the case was not about banking directly, but the mechanics of banking were relevant to the dispute at issue (Alberta Treasury Branches are an Alberta (Canada)-based financial institution):

> The chartered banks in Canada issue obligations, namely, deposit liabilities, which are generally accepted as means of payment in Canada although they do not have the status of legal tender. In like manner the treasury branches create deposit liabilities. These deposit liabilities are a form of book debt owing by the bank to the customer and in most cases, including the treasury branches, are subject to transfer by cheque. These payments by cheque provide the means of settlement of a large percentage of the transactions of Canada. Likewise, the treasury branches' deposit liabilities furnish their customers with a similar means of making settlement of transactions by orders drawn on the treasury branches because the treasury branches have been able to persuade the public to regard their deposit liabilities or promises to pay as the equivalent of legal tender by undertaking to convert them into legal tender on demand. These deposit liabilities are used by the customers of the bank or treasury branch which created them as a substitute for currency.

Get it? Every bank in the world deals primarily in privately created and virtually-costless-to-produce “non-legal-tender substitutes for currency” issued either directly by themselves, or as a secondary market participant for “non-legal-tender substitutes

for currency" issued by the master franchisee (*e.g.*, the big six chartered banks in Canada, with unlimited authorized capital) in a given geographic region (Canada).

Summary and Review

By way of summary and review, let us look at recent typical small business loan (nominal $2.1 million) as arranged by Sun Life Financial, a global financial giant based in Canada.

First the nominal borrower was required to pay a non-refundable $4,000 "application fee" while agreeing that Sun Life is thereby under no liability to advance credit. That of itself makes the arrangement into a wager and contrary to s. 206(1)(a) of the *Criminal Code of Canada*, which makes indictable any one who (emphasis added):

- makes…any proposal, scheme or plan <u>for advancing</u>, <u>lending</u>…or in any way disposing of any property [*e.g.*, loan proceeds] by…<u>any mode of chance whatever</u>.

Next, the nominal borrower was required to pay a $42,000 "security for costs fee" with the curious added *provisio* (condition) that the parties agree that the right of property in the $42,000 would pass to SUN LIFE and then be refunded forthwith should the bank choose to advance any credit. The amount represented exactly 2% of the nominal loan amount. Firstly here, if it were a genuine security for costs, then it would pass in trust to the bank's custodial possession only.

Secondly, it is *prima facie* a fraud against Sun Life's required cash reserves. The clause states in essence that the nominal borrower agrees to show up the day before the bank might make an advance, with $42,000 in cash in a brown paper bag, hand it over to the bank and agree that the cash then belongs absolutely to the bank, which will hold it for a day, and then give it back if it chooses to make an award of credit under the arrangement. To me this seems rather elementary. How blind can auditors and bank examiners be?

Next the nominal borrower was required to sign, have witnessed and notarized, and deliver to Sun Life's solicitors a mortgage on the business property agreeing that the nominal borrower is irrevocably and unconditionally indebted to Sun Life in the "Principal Amount" of $2,100,000, and to give an express receipt for the alleged loan proceeds:

> 3. In consideration of the Principal Amount of lawful money of Canada, now paid by the Mortgagee to the Mortgagor, the receipt whereof is hereby acknowledged, the Mortgagor doth grant and mortgage unto the Mortgagee, its successors and assigns forever, ALL AND SINGULAR the Lands subject only to the Permitted Encumbrances.

where (by clause 1 (xiv)) ""Principal Amount" means the principal amount described in PART 1 of this mortgage [*i.e.*, $2,100,000.00].".

Two days later, the bank advanced $2,100,000 with approximately $100,000 redirected back to the bank in additional fees including of course its legal fees. What is the going rate for a lawyer to draw up constructive forgeries and other organized crime offences?

Note that not only is the receipt clause categorically false, as and when the security is executed and delivered, but the bank also flagrantly lies about the substance of the thing itself. Even the credit that is eventually flipped back in part to the nominal borrower is just that – credit. It is not "lawful money of Canada" but instead "non-legal tender substitutes for currency" "which does not have the status of legal tender" as has been judicially noted.

And of course, and again, any subsequent dealing of any kind, including the receipt of any and all payments under these so-called loans, is automatically an offense against s. 462.31(1) of the Criminal Code (*laundering proceeds of crime*).

Conclusion and cure

In law and in equity, with few exceptions, every past or present mortgaged homeowner in the world owns their home outright and can recover whatever they have paid the financial institution, plus interest, and/or receive financial compensation if the property has been sold in the meantime. It is the simplest thing in the world to implement.

To start, all nations can agree to crystallize their net foreign debt.

Then, effectively all other credit-based debt can be recognized as null and void.

Then all governments can, at near-zero cost, declare all broadly-defined deposit accounts denominated in their currency to be deemed cash deposits at the respective central bank.

The same nations can simultaneously and collectively agree to 100% required cash backing for all credit transactions going forward.

Freeze the bubble. Cash everyone out. Close the casino.

Law and equity are restored, no one loses a penny, and the twin plagues of debt and financial leverage are gone from the planet.

For my own part, the system operates on the presumption that I have no moral right to bring this information forward unless and until I have a viable solution. Well I do. It will only work once, but it will work once.

Then we can talk about a general amnesty for the broadly-defined legal profession and financial industry. This is not about vengeance or retribution but only about fixing the system.

Who on earth would be harmed by such a remedy?

No one.

We have been psychologically conditioned not to see the obvious, by a relative handful of sentient beings who would perceive the loss of power for its own sake to be a form of positive damage to themselves greater than the financial benefit of having their deposit accounts guaranteed.

They are suffering from a form of spiritual *diminished capacity*, and the best case scenario for all of us is to genuinely persuade them to take a different path before they do something that may carry with it eternal consequences.

So we can all do this the easy way where everybody wins, or we can do it the hard way where some substantial damage and destruction to people and property may, and likely will, result. Despite the overall tone of much of the preceding, I do believe, or at least understand, the concept of *giving the devil his due*. By whatever means the oligarchy has managed to fool the vast majority of humanity for at least 300 years and has amassed either nominal title or claim to the virtual entirety of real wealth on Earth, including the future labour of the masses. Is it realistic to expect them to walk away from that regardless of how it was obtained?

The middle way is usually best, not by pure probability, but for a reason. Perhaps it is as simple as actually thanking the oligarchy for the lesson learned, allow it to capitalize or protect, say, 25% of its previous maximum real wealth, and we both move on. At that point the real task becomes controlling the explosion of productive human capacity and output instead of ceding power to our darker nature.

Bear in mind, however, that the oligarchy has consistently arranged things over the centuries under the *all of nothing* principle, and has thus far gotten its way. The core risk of such a strategy is that the mark figures out what you are doing and calls your bluff.